

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

FALCK NORTHEAST CORP.,

Employer,

and

Case No. 04-RC-169974

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, DISTRICT COUNCIL 88

Petitioner.

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EMPLOYER’S OPPOSITION TO PETITIONER’S REQUEST FOR REVIEW

Employer, FALCK NORTHEAST CORP., by and through undersigned counsel and pursuant to 29 C.F.R. § 102.67(f), hereby submits its Opposition to Petitioner’s Request for Review filed on March 29, 2016, in the above-captioned matter, and states as follows:

On March 15, 2016, the Regional Director for Region 4 issued its Decision and Order (“Decision”), dismissing the AFSCME District Council 88’s (“Union”) RC Petition because of the imminent cessation of the Employer’s operations on June 30, 2016.

The Union’s request for review should be denied and the Regional Director’s Decision should be final because the Employer carried its burden of proving that the cessation of its operations is certain and imminent, and an election in the petitioned-for unit will not effectuate the purposes of the Act.

The Employer’s Divisional Chief Operating Officer, Brendan McNiff, testified regarding the following un rebutted facts and evidence at the Hearing:

1. The Employer decided to cease its operations on February 8, 2016, with an effective date of June 30, 2016. (Tr. 13-14, 23). The decision is final. (Tr. 18).

2. The Employer's regional management was informed of the decision on February 26, 2016. (Tr. 14).

3. Pursuant to its obligations under Pennsylvania law, Title 28 Section 1027.13, the Employer sent a letter to the Montgomery County EMS Office on February 26, 2016, providing notice to the local governmental agency of the Employer's discontinuation of operations from all Pennsylvania locations effective June 30, 2016. (Tr. 14-16; Employer Ex. 1). The Employer is only obligated to Montgomery County, so it only provided notice to Montgomery County. (Tr. 23).

a. Employer Exhibit 1 corroborates and substantiates the unrebutted testimony of Mr. McNiff that the Employer's cessation of operations is imminent. A copy of Employer's letter to Montgomery County EMS was admitted into evidence as Exhibit 1. There was no objection to the receipt of Employer's Exhibit 1 into the record. (Tr. 17).

4. On February 25 and 26, 2016, the Employer gave notice to all of its contracted facilities of its discontinuation of services. (Tr. 16; Employer Ex. 1).

a. Employer's Exhibit 1 corroborates and substantiates the unrebutted testimony of Mr. McNiff regarding this fact.

5. Pursuant to the regulatory requirements of Pennsylvania law, newspaper advertisements of the Employer's closure would be posted within the 90 day notice period. (Tr. 16; Employer Ex. 1). The Employer's intent was to post them by the end of the week of February 29, 2016. (Tr. 17). Moreover, as testified by Mr. McNiff at the hearing, on March 3, 2016, the Employer posted the required public legal notice in the Times Herald regarding the Employer's discontinuation of operations at all of its Pennsylvania locations effective June 30, 2016. The Employer's public legal notice is available for review at:

<http://pa.mypublicnotices.com/PublicNotice.asp?Page=PublicNotice&AdId=4041897>.

- a. Employer's Exhibit 1, as well as the public legal notice posted in the Times Herald, corroborates and substantiates the unrebutted testimony of Mr. McNiff.

6. In addition, a memorandum was prepared by the Employer's Regional Chief Executive Officer to inform the Employer's employees of the closure of all locations in Pennsylvania. (Tr. 17; Employer Ex. 2). Mr. McNiff testified that the letter was being distributed to all employees on the afternoon of February 29, 2016. (Tr. 18).

- a. This letter further corroborates and substantiates the unrebutted testimony of Mr. McNiff regarding the imminent cessation of the Employer's operations on June 30, 2016. There was no objection to the receipt of Employer's Exhibit 2 into the record. (Tr. 43-44).

7. After June 30, 2016, all employees of the Employer in Pennsylvania will be terminated, and the Employer will not provide any services or employ anyone in the Pennsylvania region. There is no expectation that employees will be recalled in the future. (Tr. 18-19). The Union presented no evidence to the contrary.

8. Worker Adjustment Retraining and Notification Act ("WARN Act") notices will be provided by the Employer within the statutory period to all employees who will be terminated. (Tr. 18).

In no way did the Hearing Officer or the Regional Director place the burden of proving that the cessation of operations was imminent and certain on any party other than the Employer. Based on the unrebutted testimony of the Employer, the competent substantial evidence reflects that the cessation of the Employer's operations is imminent and certain, and the Regional Director's Decision and Order comports with the Board's precedent on the issue.

As plainly explained by the Board in March Associates Construction, Inc., 2012 WL 1496208 *1 (N.L.R.B. April 27, 2012), “it does not follow that uncontroverted testimony, without more, is not enough” evidence. As of the date of the hearing, the Employer had decided to cease all Pennsylvania operations by June 30, 2016, and had taken all reasonable and initial steps within the applicable statutory and other legal deadlines to inform affected parties and effectuate the process of closing its operations effective June 30, 2016. There is no evidence contrary to the Employer’s stated intention, or actions to effectuate the stated intention, on the record. The only place speculation enters into the picture is in the Union’s unsubstantiated, conclusory assertions, and that is not grounds for review or reversal of the Regional Director’s Decision and Order. Any argument to the contrary by the Union is purely speculative and without support, and indeed, since the hearing the Employer has continued to take all necessary and appropriate steps.

WHEREFORE, the Employer has carried its burden of proof and the Union has not put forth any evidence to the contrary and the Employer respectfully requests that the Union’s Request for Review be denied without further consideration.

Dated: April 1, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed with the NLRB via the NLRB's e-filing portal, and that a true and correct of same has been served **via e-mail** this **1st day of April, 2016**, on:

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